2013 OK 36

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

Timothy Wall,	)	
	)	
Appellant,	)	
	)	
v.	)	No. 109,005
	)	FOR OFFICIAL PUBLICATION
	)	
John S. Marouk, D.O.,	)	
	)	
Appellee.	)	

CERTIORARI TO THE DISTRICT COURT OF TULSA COUNTY

Honorable Dana Kuehn, Trial Judge

¶0 Appellant challenges the constitutionality of 12 O.S. 2011 §19, which requires filing of an affidavit of merit in actions for professional negligence. We granted certiorari to address the constitutionality of this statute. We hold that it is a special law which violates the Okla. Const. art. 5, §46, and that it also creates an unconstitutional financial burden on access to the courts in violation of the Okla. Const. art. 2, §6.

CERTIORARI PREVIOUSLY GRANTED;
ORDER OF THE DISTRICT COURT OVERRULED;
REMANDED FOR FURTHER PROCEEDINGS.

Glenn R. Beustring
Tulsa, Oklahoma — For Appellant.

S. Lance Freije
Brian Jack Goree
Bob Latham
Ambar Iqbal Malik
Tulsa, Oklahoma — For Appellee.

KAUGER, J.:

¶1 The dispositive issue presented is whether, in the aftermath of Zeier v. Zimmer, 2006 OK 98, 152 P.3d 861, the legislative amendment to 12 O.S. 2011§19[1], removed the unconstitutional infirmity from the requirement of an

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[1] At the time this cause was commenced, the 2011 code volumes had not yet been published. However, as there has been no change in §19 since its codification, this opinion refers to the 2011 statutes rather than the 2009 Supplement. Title 12 O.S. 2011 §19 provides:

A. 1. In any civil action for professional negligence, except as provided in subsection B of this section, the plaintiff shall attach to the petition an affidavit attesting that:

a. the plaintiff has consulted and reviewed the facts of the claim with a qualified expert,

b. the plaintiff has obtained a written opinion from a qualified expert that clearly identifies the plaintiff and includes the determination of the expert that, based upon a review of the available material including, but not limited to, applicable medical records, facts or other relevant material, a reasonable interpretation of the facts supports a finding that the acts or omissions of the defendant against whom the action is brought constituted professional negligence, and

c. on the basis of the review and consultation of the qualified expert, the plaintiff has concluded that the claim is meritorious and based on good cause.

2. If the civil action for professional negligence is filed:

a. without an affidavit being attached to the petition, as required in paragraph 1 of this subsection, and

b. no extension of time is subsequently granted by the court, pursuant to subsection B of this section, the court shall, upon motion of the defendant, dismiss the action without prejudice to its refiling.

3. The written opinion from the qualified expert shall state the acts or omissions of the defendant or defendants that the expert then believes constituted professional negligence and shall include reasons explaining why the acts or omissions constituted professional negligence. The written opinion from the qualified expert shall not be admissible at trial for any purpose nor shall any inquiry be permitted with regard to the written opinion for any purpose either in discovery or at trial.

B. 1. The court may, upon application of the plaintiff for good cause shown, grant the plaintiff an extension of time, not exceeding ninety (90) days after the date the petition is filed, except for good cause shown, to file in the action an affidavit attesting that the plaintiff has obtained a written opinion from a qualified expert as described in paragraph 1 of subsection A of this section.

2. If on the expiration of an extension period described in paragraph 1 of this subsection, the plaintiff has failed to file in the action an affidavit as described above, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action without prejudice to its refiling. If good cause is shown, the resulting extension shall in no event exceed sixty (60) days.

C. 1. Upon written request of any defendant in a civil action for professional negligence, the plaintiff shall, within

affidavit of merit in any civil action for professional negligence. An examination of the Okla. Const. art. 5, §46[2], art. 2, §6[3], 63 O.S. 2011 §1-1708.1C, as well as

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ten (10) business days after receipt of such request, provide the defendant with:

a. a copy of the written opinion of a qualified expert mentioned in an affidavit filed pursuant to subsection A or B of this section, and

b. an authorization from the plaintiff in a form that complies with applicable state and federal laws, including the Health Insurance Portability and Accountability Act of 1996, for the release of any and all medical records related to the plaintiff for a period commencing five (5) years prior to the incident that is at issue in the civil action for professional negligence.

2. If the plaintiff fails to comply with paragraph 1 of this subsection, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action without prejudice to its refiling.

D. A plaintiff in a civil action for professional negligence may claim an exemption to the provisions of this section based on indigency pursuant to the qualification rules established as set forth in Section 4 of this act. (Internal citations omitted).

[2] Okla. Const. art. 5, §46 provides:

§ 46. Local and special laws on certain subjects prohibited

The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law authorizing:

The creation, extension, or impairing of liens;

Regulating the affairs of counties, cities, towns, wards, or school districts;

Changing the names of persons or places;

Authorizing the laying out, opening, altering, or maintaining of roads, highways, streets, or alleys;

Relating to ferries or bridges, or incorporating ferry or bridge companies, except for the erection of bridges crossing streams which form boundaries between this and any other state;

Vacating roads, town plats, streets, or alleys;

Relating to cemeteries, graveyards, or public grounds not owned by the State;

Authorizing the adoption or legitimation of children;

Locating or changing county seats;

Incorporating cities, towns, or villages, or changing their charters;

For the opening and conducting of elections, or fixing or changing the places of voting;

Granting divorces;

prior case law, leads to the inevitable conclusion that it did not. We hold that it is a special law regulating the practice of law and that it places an impermissible financial burden on access to the courts.

Creating offices, or prescribing the powers and duties of officers, in counties, cities, towns, election or school districts;

Changing the law of descent or succession;

Regulating the practice or jurisdiction of, or changing the rules of evidence in judicial proceedings or inquiry before the courts, justices of the peace, sheriffs, commissioners, arbitrators, or other tribunals, or providing or changing the methods for the collection of debts, or the enforcement of judgments or prescribing the effect of judicial sales of real estate;

Regulating the fees, or extending the powers and duties of aldermen, justices of the peace, or constables;

Regulating the management of public schools, the building or repairing of school houses, and the raising of money for such purposes;

Fixing the rate of interest;

Affecting the estates of minors, or persons under disability;

Remitting fines, penalties and forfeitures, and refunding moneys legally paid into the treasury;

Exempting property from taxation;

Declaring any named person of age;

Extending the time for the assessment or collection of taxes, or otherwise relieving any assessor or collector of taxes from due performance of his official duties, or his securities from liability;

Giving effect to informal or invalid wills or deeds;

Summoning or impaneling grand or petit juries;

For limitation of civil or criminal actions;

For incorporating railroads or other works of internal improvements;

Providing for change of venue in civil and criminal cases. (Emphasis added).

[3] The Okla. Const. art 2, §6 provides:

§ 6. Courts of justice open--Remedies for wrongs--Sale, denial or delay

The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.

FACTS

¶2 Appellant Timothy Wall (Patient) filed a petition for medical negligence against Dr. John S. Marouk, D.O. (Physician) on August 11, 2010. The patient alleged that the physician negligently cut the median nerve in his right arm during a carpal tunnel surgery, resulting in loss of feeling in his right fingers. The patient did not attach an affidavit of merit as required by 12 O.S. 2011 §19. The physician filed a motion to dismiss on September 8, 2010, on the grounds that the patient failed to include the affidavit of merit.

¶3 In response to the physician's motion to dismiss, the patient argued that 12 O.S 2011 §19 was unconstitutional based on this court's holding in Zeier v. Zimmer. On December 9, 2010, the trial court entered a certified interlocutory order denying the physician's motion to dismiss, and giving the patient twenty days from the date of the order to file an affidavit of merit pursuant to 12 O.S 2011 §19 or face dismissal of the cause. On January 3, 2011, the trial court entered an amended certified interlocutory order stating that 12 O.S. 2011 §19 required an affidavit of merit finding the patient's arguments unpersuasive.[4] On February 14,

[4] The patient filed a Petition in Error on Certified Interlocutory order with this Court on December 14, 2010, in response to three minute orders issued by the trial court on December 7, 2010. On December 16, 2010, this Court ordered the patient to show cause why his appeal should not be dismissed for lack of an appealable order. On December 17, 2010, the physician filed a motion to dismiss arguing lack of an appealable order, and the patient responded on December 30, 2010.

On January 4, 2011, this Court entered an order acknowledging the filing of the district court's Amended Certified Interlocutory Order on January 3, 2011. We directed the patient to file a supplemental petition for certiorari – certified interlocutory order no later than January 18, 2011. The patient filed his Amended Petition for Certiorari Certified Interlocutory Order, as well as a Motion to Retain, on January 11, 2011. This Court's grant of certiorari has rendered moot the patient's pending motion to retain.

2011, we granted the patient's Petition for Certiorari to Review a Certified Interlocutory Order and stayed proceedings in the trial court pending review on certiorari to consider the constitutionality of 12 O.S. 2011 §19. The cause was assigned to this office on February 28, 2013.

I.
TITLE 12 O.S. 2011 §19 IS A SPECIAL LAW WHICH VIOLATES THE OKLA. CONST., ART. 5, §46.

¶4 Title 12 O.S. 2011 §19 essentially provides that in civil actions for professional negligence, the plaintiff must attach an expert's affidavit. It creates two classes, those who file a cause of action for negligence generally, and those who file a cause of action for professional negligence. The patient argues that §19 is unconstitutional because it violates the Okla. Const. art. 5, §46 prohibition on special laws. We agree. The Oklahoma Constitution is a unique document. Some of its provisions are unlike those in the constitutions of any other state, and some are more detailed and restrictive than those of other states. Section 46 is one of these provisions and it specifically prohibits the Legislature from enacting special laws dealing with twenty-eight subject areas.[5]

¶5 A special law confers some right or imposes some duty on some but not all of the class of those who stand upon the same footing and same relation to the

[5] Reynolds v. Porter, 1988 OK 88, §17, 760 P.2d 816.

subject of the law.[6] A law is special if it confers particular privileges or imposes peculiar disabilities or burdensome conditions in the exercise of a common right on a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law.[7] Special laws apply to less than the whole of a class of persons, entities or things standing upon the same footing or in substantially the same situation or circumstances, and thus do not have a uniform operation.[8] The shortcoming of a special law is that it does not embrace all the classes that it should naturally embrace, and that it creates preference and establishes inequality. It applies to persons, things, and places possessed of certain qualities or situations and excludes from its effect other not dissimilar persons, things, or places.[9]

¶6 Here, the distillate of art. 5, §46 is that the Legislature shall not pass a special law regulating the practice of judicial proceedings before the courts or any other tribunal.[10] This is precisely the situation we face. Title 12 O.S. 2011 §19

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[6] Oklahoma City v. Griffin, 1965 OK 76, ¶8, 403 P.2d 463.

[7] Oklahoma City v. Griffin, see note 6, supra at ¶3 (quoting Serve Yourself Gas, etc., Ass'n v. Brock, 39 Cal.2d 813, 820, 249 P.2d 545).

[8] Fenimore v. State *ex rel.* Com'rs of Land Office, 200 Okla. 400, 402, 194 P.2d 852, 854 (Okla. 1948).

[9] Barrett v. Bd. of Com'rs of Tulsa County, 185 Okla. 111, 90 P.2d 442, 446 (Okla. 1939).

[10] Okla. Const. art. 5, §46 provides in pertinent part:

The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law authorizing: ....

Regulating the practice or jurisdiction of, or changing the rules of evidence in judicial proceedings or

creates a new subclass of tort victims and tortfeasors known as professional tort victims and tortfeasors. In doing so, it places an out of the ordinary enhanced burden on these subgroups to access the courts by requiring victims of professional misconduct to obtain expert review in the form of an affidavit of merit prior to proceeding, and it requires the victims of professional misconduct to pay the cost of expert review.[11] It does establish an impermissible special law regulating the practice of judicial proceedings before the courts.

¶7 The prohibition against special laws is not new. Even before statehood and the adoption of the Oklahoma Constitution, special laws were not permissible. In Guthrie Daily Leader v. Cameron, 1895 OK 71, 42 P. 635, the Supreme Court of the Territory of Oklahoma held that:

> A statute relating to persons or things as a class is a general law. One relating to particular persons or things of a class is special. The number of persons upon whom the law shall have any direct effect may be very few, by reason of the subject to which it relates, but it must operate equally and uniformly upon all brought within the relations and circumstances for which it provides.

Shortly after statehood, we held in Chickasha Cotton Oil Co. v. Lamb & Tyner, 1911 OK 68, 114 P. 333, 333, that the Okla. Const. art. 5, §46 prohibited the enactment of special or local laws upon any of the subjects named within it, except

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inquiry before the courts, justices of the peace, sheriffs, commissioners, arbitrators, or other tribunals, or providing or changing the methods for the collection of debts, or the enforcement of judgments or prescribing the effect of judicial sales of real estate; ...

[11] Title 12 O.S. 2011 §19, see note 1, supra.

such local or special legislation upon subjects authorized by other provisions of the Okla. Constitution.

¶8 It is undisputed that during the course of litigation the plaintiffs will be required to prove their case, as any other cause requires. They just do not have to provide expert testimony before it can be filed. After the Field Code was replaced by the Oklahoma Pleading Code of 1984, access to the district court was simplified and streamlined.[12] It recognized that there was one form of action – a civil action which was applicable to all suits of a civil nature.[13] Further, it specified that a short and plain statement of the claim showing that the pleader was entitled to relief was sufficient to constitute a pending claim.[14] This form of notice pleading recognized that discovery, pretrial conferences, and summary judgments are more

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[12] Title 12 O.S. 2011 §2001.

[13] Title 12 O.S. 2011 §2002 provides:

There shall be one form of action to be known as "civil action".

[14] Title 12 O.S. 2011 §2008 provides in pertinent part:

A. CLAIMS FOR RELIEF. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim or third-party claim, shall contain:

1. A short and plain statement of the claim showing that the pleader is entitled to relief; and

2. A demand for judgment for the relief to which he deems himself entitled. Every pleading demanding relief for damages in money in excess of the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code shall, without demanding any specific amount of money, set forth only that the amount sought as damages is in excess of the amount required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code, except in actions sounding in contract. Every pleading demanding relief for damages in money in an amount that is required for diversity jurisdiction pursuant to Section 1332 of Title 28 of the United States Code or less shall specify the amount of such damages sought to be recovered. Relief in the alternative or of several different types may be demanded.

effective methods of performing the functions of disclosing the factual and legal issues in dispute, pretrial planning, and disposing of frivolous or unfounded claims and defenses which historically were performed by the pleadings.[15] The requirement of an affidavit of merit before an action can proceed represents a step back from this more open pleading standard, and moreover, does not apply equally to all civil actions but only to a subset of the class—actions for professional negligence.

A.

Title 12 O.S. 2011 §19 is functionally identical to the affidavit requirement found unconstitutional in Zeier v. Zimmer, 2006 OK 98, 152 P.3d 861.

¶9 In Zeier v. Zimmer, 2006 OK 98, 152 P.3d 861, we held that a previous incarnation of the affidavit of merit requirement, found at 63 O.S. Supp. 2003 §1-1708.1E was an unconstitutional special law.[16] That law required an affidavit in

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[15] Title 12 O.S. 2011 §2008, Committee Comment to Section 2008.

[16] Zeier v. Zimmer was decided by this Court 8 to 1, with all members of the current Court who were on the Court when Zeier was decided concurring or concurring in result. Title 63 O.S. Supp. 2003 §1-1708.1E (repealed by Okla. Sess. Laws 2009, c. 228, §87) provided:

A. 1. In any medical liability action, except as provided in subsection B of this section, the plaintiff shall attach to the petition an affidavit attesting that:

a. the plaintiff has consulted and reviewed the facts of the claim with a qualified expert,

b. the plaintiff has obtained a written opinion from a qualified expert that clearly identifies the plaintiff and includes the expert's determination that, based upon a review of the available medical records, facts or other relevant material, a reasonable interpretation of the facts supports a finding that the acts or omissions of the health care provider against whom the action is brought constituted professional negligence, and

c. on the basis of the qualified expert's review and consideration, the plaintiff has concluded that the claim is meritorious and based on good cause.

2. If a medical liability action is filed:

any action for **medical liability**, whereas the current version of the requirement in §19 requires the affidavit in actions for **professional negligence**.[17]

¶10 Interestingly, 12 O.S. 2011 §19 does not define professional negligence in the context of the affidavit requirement, nor does any other section of Title 12,

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a. without an affidavit being attached to the petition, as required in paragraph 1 of the subsection, and

b. no extension of time is subsequently granted by the court, pursuant to subsection B of this section, the court shall, upon motion of the defendant, dismiss the action without prejudice to its refiling.

3. The written opinion from the qualified expert shall state the acts or omissions of the defendant(s) that the expert then believes constituted professional negligence and shall include reasons explaining why the acts or omissions constituted professional negligence. The written opinion from the qualified expert shall not be admissible at trial for any purpose nor shall any inquiry be permitted with regard to the written opinion for any purpose either in discovery or at trial.

B. 1. The court may, upon application of the plaintiff for good cause shown, grant the plaintiff an extension of time, not exceeding ninety (90) days after the date the petition is filed, except for good cause shown, to file in the action an affidavit attesting that the plaintiff has obtained a written opinion from a qualified expert as described in paragraph 1 of subsection A of this section.

2. If on the expiration of an extension period described in paragraph 1 of this subsection, the plaintiff has failed to file in the action an affidavit as described above, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action without prejudice to its refiling.

C. 1. Upon written request of any defendant in a medical liability action, the plaintiff shall, within ten (10) business days after receipt of such request, provide the defendant with:

a. a copy of the written opinion of a qualified expert mentioned in an affidavit filed pursuant to subsection A or B of this section, and

b. an authorization from the plaintiff in a form that complies with applicable state and federal laws, including the Health Insurance Portability and Accountability Act of 1996, for the release of any and all medical records related to the plaintiff for a period commencing five (5) years prior to the incident that is at issue in the medical liability action.

2. If the plaintiff fails to comply with paragraph 1 of this subsection, the court shall, upon motion of the defendant, unless good cause is shown for such failure, dismiss the action without prejudice to the refilling.

[17] Title 12 O.S. 2011 §19 provides in pertinent part:

A. 1. In any civil action for professional negligence, except as provided in subsection B of this section, the plaintiff shall attach to the petition an affidavit...

the code of civil procedure.[18] Professional negligence is defined only one place in the Oklahoma statutes. The definition is found in the Affordable Access to Health Care Act, the same Act that contained the original affidavit of merit provision we previously held unconstitutional in Zeier. Title 63 O.S. 2011 §1-1708.1C, the Definitions section of the Affordable Access to Health Care Act, defines professional negligence as:

> 5. "Professional negligence" means **a negligent act or omission to act by a health care provider in the rendering of health care services**, provided that such services are within the scope of services for which the health care provider is licensed, certified, or otherwise authorized to render by the laws of this state, and which are not within any restriction imposed by a hospital or the licensing agency of the health care provider...

The same section defines medical liability action as:

> 3. "Medical liability action" means **any civil action involving, or contingent upon, personal injury or wrongful death brought against a health care provider based on professional negligence**...

The medical affidavit requirement we previously found unconstitutional in Zeier was codified at §1-1708.1E, part of the very same Affordable Access to Health Care Act that contains these two definitions. It appears the Legislature re-enacted the affidavit requirement in a different title using the words professional negligence rather than medical liability but otherwise left the language essentially the same. But, the Legislature did not remove the

[18]Title 12 O.S. 2011 §19.

two definitions from the Affordable Access to Health Care Act.

¶11 Codified at 63 O.S. Supp. 2003 §1-1708.1E, the original affidavit requirement provided in pertinent part:

> A. 1. In any **medical liability action**, except as provided in subsection B of this section, the plaintiff shall attach to the petition an affidavit...

The language of the new affidavit requirement, codified at 12 O.S. 2011 §19 and which we examine today, provides in pertinent part:

> A. 1. In any **civil action for professional negligence**, except as provided in subsection B of this section, the plaintiff shall attach to the petition an affidavit

Both the phrases medical liability action and professional negligence are defined at 63 O.S. 2011 §1-1708.1C, as discussed above, but not in §19.

¶12 It is within the province of the legislative body to define words appearing in legislative acts, and where an act passed by the legislature embodies a definition, it is binding on the courts.[19] Title 25 O.S. 2011 §2 provides:

> Whenever the meaning of a word or phrase is defined in any statute, such definition is applicable to the same word or phrase wherever it occurs, except where contrary intention plainly appears.

When the provisions of a statute assign one meaning to a word or phrase, its definition will apply in every other instance in which the same word is found

[19] Oliver v. City of Tulsa, 1982 OK 121, ¶19, 654 P.2d 607; 654 P.2d 607; Traxler v. State, 98 Okla. Cr. 231, 251 P.2d 815.

anywhere else in the statutory compilation.[20] Section 19 does not contain a definition for professional negligence, but because professional negligence is defined in the Affordable Access to Health Care Act at 63 O.S. 2011 §1-1708.1C, the definition that professional negligence means an act or omission by a health care provider rendering health care services is applicable to §19.

¶13 It has long been settled in this state that one cannot do indirectly what cannot be done directly.[21] An examination of the definitions for medical liability action and professional negligence illustrates that they are intrinsically tied together. **An action for professional negligence is a medical liability action** insofar as 63 O.S. 2011 §1-1708.1C is concerned.

¶14 Even without the definition of professional negligence found at 63 O.S. 2011 §1-1708.1C there are problems with vagueness. If the Legislature did not intend professional negligence to mean "a negligent act or omission to act by a health care provider in the rendering of health care services,"[22] then what did they mean? Black's Law Dictionary defines professional as "[a] person who belongs to a learned profession or whose occupation requires of a high level of training and

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[20] McClure v. ConocoPhillips Co., 2006 OK 42, ¶13, 142 P.3d 390; Fraternal Order of Police, Lodge 108 v. City of Ardmore, 2002 OK 19, ¶14, 44 P.3d 569; Stone v. Hodges, 1967 OK 214, ¶6, 435 P.2d 165.

[21] Perry Water, Light & Ice Co. v. City of Perry, 29 Okla. 593, 120 P.582, 588 (Okla. 1911); Superior Mfg. Co. v. School Dist. No. 63, Kiowa County, 28 Okla. 293, 114 P. 328, 330 (Okla. 1910).

[22] Title 63 O.S. 2011 §1-1708.1C.3.

proficiency."[23] Profession is further defined as:

> A vocation requiring advanced education and training; esp., one of the three traditional learned professions— law, medicine, and the ministry.[24]

Does this mean that one is required to obtain an affidavit of merit pursuant to §19 before filing suit against any doctor, lawyer or clergyman for negligence in performing their duties? Is professional in this context intended to be broader still? Title 59 of the Oklahoma Statutes, entitled "Professions and Occupations," contains multiple subchapters that control the licensing and practice of what could be considered various professions in the State of Oklahoma.

¶15 For example, 59 O.S. 2011 §15.1A, which provides definitions under the Oklahoma Accountancy Act, defines accountancy as "the profession or practice of accounting."[25] Title 59 O.S. 2011§396.2, concerning funeral services, defines a funeral establishment partly as "any place where any person or persons shall hold forth and be engaged in the profession of undertaking or funeral directing."[26] Title 59 also contains other chapters for: barbers, cosmetology, plumbers and plumbing

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[23] BLACK'S LAW DICTIONARY (9th ed. 2009), professional.

[24] BLACK'S LAW DICTIONARY (9th ed. 2009), profession.

[25] Title 59 O.S. 15.1A(1) provides:

1. "Accountancy" means the profession or practice of accounting.

[26] Title 59 O.S. 2011 §396.2(3) provides:

3. "Funeral establishment" means a place of business used in the care and preparation for burial, commercial embalming, or transportation of dead human remains, or any place where any person or persons shall hold forth and be engaged in the profession of undertaking or funeral directing.

contractors, foresters, sanitarians and environmental specialists, bail bondsmen, pawnbrokers, and many more. Title 18 O.S. 2011 §803 provides definitions for the Professional Entity Act which governs the creation of professional corporations in Oklahoma. It includes a broad definition for professional service.[27]

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[27] Title 18 O.S. 2011 §803(6) provides:

6. "Professional service" means the personal service rendered by:

a. a physician, surgeon or doctor of medicine pursuant to a license under Sections 481 through 524 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of medicine,

b. an osteopathic physician or surgeon pursuant to a license under Sections 620 through 645 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of osteopathy,

c. a chiropractic physician pursuant to a license under Sections 161.1 through 161.20 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of chiropractic,

d. a podiatric physician pursuant to a license under Sections 135.1 through 160.2 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of podiatric medicine,

e. an optometrist pursuant to a license under Sections 581 through 606 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of optometry,

f. a veterinarian pursuant to a license under Sections 698.1 through 698.30b of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of veterinary medicine,

g. an architect pursuant to a license under Sections 46.1 through 46.41 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of architecture,

h. an attorney pursuant to his authority to practice law granted by the Supreme Court of the State of Oklahoma,

i. a dentist pursuant to a license under Sections 328.1 through 328.53 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of dentistry,

j. a certified public accountant or a public accountant pursuant to his or her authority to practice accounting underSections 15.1 through 15.38 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of public accountancy,

k. a psychologist pursuant to a license under Sections 1351 through 1376 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of psychology,

l. a physical therapist pursuant to a license under Sections 887.1 through 887.18 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of physical therapy,

m. a registered nurse pursuant to a license under Sections 567.1 through 567.19 of Title 59 of the Oklahoma Statutes, and any other subsequent laws regulating the practice of nursing,

¶16 If the Legislature intended to apply the definition of professional negligence found in 63 O.S. 2011 §1-1708.1C, then the affidavit requirement applies to the same subclass and set of actions as the provision we found unconstitutional as a special law in Zeier. If the Legislature intended to avoid the prohibition on special laws by leaving professional negligence undefined, they have caused more problems than they solved. The provision would, taken to the

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n. a professional engineer pursuant to a license under Sections 475.1 through 475.22a of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of engineering,

o. a land surveyor pursuant to a license under Sections 475.1 through 475. 22a of Title 59 of the Oklahoma Statutes, and any subsequent laws relating to the practice of land surveying,

p. an occupational therapist pursuant to Sections 888.1 through 888.15 of Title 59 of the Oklahoma Statutes and any subsequent law regulating the practice of occupational therapy,

q. a speech pathologist or speech therapist pursuant to Sections 1601 through 1622 of Title 59 of the Oklahoma Statutes, and any subsequent law regulating the practice of speech pathology,

r. an audiologist pursuant to Sections 1601 through 1622 of Title 59 of the Oklahoma Statutes, and any subsequent law regulating the practice of audiology,

s. a registered pharmacist pursuant to Sections 353 through 366 of Title 59 of the Oklahoma Statutes, and any subsequent law regulating the practice of pharmacy,

t. a licensed perfusionist pursuant to Sections 2051 through 2071 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of perfusionists,

u. a licensed professional counselor pursuant to Sections 1901 through 1920 of Title 59 of the Oklahoma Statutes, and any subsequent law regulating the practice of professional counseling,

v. a licensed marital and family therapist pursuant to Sections 1925.1 through 1925.18 of Title 59 of the Oklahoma Statutes, and any subsequent law regulating the practice of marital and family therapy,

w. a dietitian licensed pursuant to Sections 1721 through 1739 of Title 59 of the Oklahoma Statutes and any subsequent laws regulating the practice of dietitians,

x. a social worker licensed pursuant to Sections 1250 through 1273 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of social work,

y. a licensed alcohol and drug counselor pursuant to Sections 1870 through 1885 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of alcohol and drug counseling, or

z. a licensed behavioral practitioner pursuant to Sections 1930 through 1949.1 of Title 59 of the Oklahoma Statutes, and any subsequent laws regulating the practice of behavioral health services...

ultimate logical conclusion, require an affidavit for almost every cause of action.

B.

Because the current incarnation of the affidavit of merit provision codified at 12 O.S. 2011 §19 is functionally the same as the previous unconstitutional provision analyzed in Zeier, it is also unconstitutional.

¶17 The affidavit of merit requirement contained within §19 still divides tort victims alleging negligence into two classes: those who pursue a cause of action for negligence generally and those who name professionals as defendants. It fails the test set forth in Zeier because an additional requirement is added to actions for professional negligence. Not only have we defined what a special law is since before statehood, we have reiterated repeatedly in Reynolds v. Porter, 1988 OK 88, §17, 760 P.2d 816, and a long line of other cases, that the Okla. Const. art. 5, §46 is an absolute and unequivocal prohibition against special legislation in the listed subject areas, in this instance the regulation of judicial proceedings.[28]

¶18 We held in City of Enid v. Public Employees Relations Bd., 2006 OK 16, ¶8,133 P.3d 281, that general laws must apply equally to all classes similarly situated, and apply to like conditions and subjects. We also noted, citing Reynolds, that civil actions may be classified into specific categories of tort actions of a similar nature for statute of limitation purposes, and that doing so would not, for similar and more commanding reasons, constitute a special or local law that would

[28] Reynolds, see note 5, supra at ¶21; Maule v. Indep. School Dist. No. 9, 1985 OK 110, ¶12, 714 P.2d 199; City of Tulsa v. McIntosh, 1930 OK 71, ¶11-12, 284 P. 875; Union School Dist. No. 1 v. Foster Lumber Co., 1930 OK 50, ¶7, 286 P. 774; Bradford v. Cole, 1923 OK 571, ¶4, 217 P. 470.

violate the strictures contained in §46.[29] However, we recognized that Reynolds held that a statute carving out a special class of tort victims, those who suffered medical malpractice, for purposes of applying a special three year statute of limitations was a special law.[30] Because this Court held in Zeier that the first incarnation of the medical affidavit requirement found at 63 O.S. Supp. 2003 §1-1708.1E was an unconstitutional special law pursuant to the Okla. Const. art. 5, §46, it would be inconsistent to hold that the current iteration at §19, incorporating the same class of tort victims, definitions and requirements, is not.

II.
TITLE 12 O.S. 2011 §19 IS AN UNCONSTITUTIONAL ECONOMIC BURDEN ON ACCESS TO THE COURTS PURSUANT TO THE OKLA. CONST. ART. 2, §6.

¶19 The patient also alleges that 12 O.S. 2011 §19 creates an unconstitutional burden on access to the courts by requiring an affidavit of merit for any civil action for professional negligence.[31] The Okla. Const. art. 2, §6 provides that:

> The courts of justice of the State shall be open to every person, and speedy and certain remedy afforded for every wrong and for every injury to person, property, or reputation; and right and justice shall be administered without sale, denial, delay, or prejudice.

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[29] City of Enid v. Public Employees Relations Bd., 2006 OK 16, ¶9,133 P.3d 281 (citing Reynolds, see note 5, supra at ¶18.

[30] Reynolds, see note 5, supra at ¶¶18-21.

[31] Title 12 O.S. 2011 §19, see note 1, supra.

¶20 In Barzellone v. Presley, 2005 OK 86, 126 P.3d 588, we examined the constitutionality of a $349 jury fee imposed by statute. We held that such fees are permissible, as long as they are reasonable, because the right of litigants to access the courts does not mean that they are entitled to do so at no cost.[32] However, we were careful to qualify our decision, noting that:

> This opinion should not be read as a rubber stamp for any decision the Legislature might make on the amount of fees levied in association with jury trials. The Oklahoma Constitution does not anticipate that litigants will be burdened with the entire bill for maintenance of the court system. *Mehdipour v. State ex rel. Dept. of Corrections*, 2004 OK 19, ¶20, 90 P.3d 546... The constitutional right to a jury trial is a personal right, *Massey v. Farmers Ins. Group*, 1992 OK 80, ¶16, 837 P.2d 880; *Jenkins v. State*, 1912 OK CR 8, 120 P. 298, which the Legislature cannot waive, *Massey v. Farmers Ins. Group*, 1992 OK 80, ¶16, 837 P.2d 880, through creating a fiscal barrier so unreasonable as to eliminate the right itself. When comparing the jury fee charge with a jury proceeding utilizing 6 jurors, it would appear that the $349.00 fee charge approaches the barrier beyond which the charge could not survive constitutional scrutiny.[33]

¶21 A year later, we revisited the issue in Zeier v. Zimmer, Inc., 2006 OK 98, ¶19, 152 P.3d 861. There, we agreed with a patient that a statutorily created requirement for the payment of professional services as a prerequisite to filing a petition alleging medical negligence violated the guarantee of access to the courts.[34] In Zeier, we calculated that the cost of obtaining a professional's opinion

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[32] Barzellone v. Presley, 2005 OK 86, ¶24, 126 P.3d 588.

[33] Barzellone v. Presley, see note 32, supra at ¶39.

[34] Zeier v. Zimmer, Inc., 2006 OK 98, ¶32, 152 P.3d 861. The affidavit of merit provision in Zeier, was found at 63 O.S. Supp. 2003 §1-1708.1E (repealed by Okla. Sess. Laws 2009, c. 228, §87), see note 16, supra.

to support the affidavit of merit could range from $500.00 to $5,000.00. This was well above the $349.00 jury fee we examined and found valid in Barzellone.[35] In Barzellone, we noted that the $349.00 jury fee was very close to crossing the line of being an unconstitutional burden on accessing the courts,[36] and we held in Zeier that at a cost of $500.00 to $5,000.00, an affidavit of merit would clearly cross beyond that line.[37]

¶22 Barzellone and Zeier illustrate that while reasonable fees to defray the cost of litigation are not a violation of the right of citizens to access the courts, the costs associated with obtaining affidavits of merit go beyond the bounds of reasonableness we set in Barzellone. As such, they create an impermissible hurdle unconstitutionally restricting the right of citizens to access the courts in violation of art. 2, §6 of the Oklahoma Constitution.

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[35] Zeier v. Zimmer, Inc., see note 34, supra at ¶28.

[36] Barzellone v. Presley, see note 32, supra at ¶39.

[37] Zeier v. Zimmer, Inc., see note 34, supra at ¶32.

In Zeier we also outlined several of the ills that are a direct result of a statutorily-mandated affidavit of merit provision of the kind at issue here. We held:

> Although statutory schemes similar to Oklahoma's Health Care Act do help screen out meritless suits, the additional certification costs have produced a substantial and disproportionate reduction in the number of claims filed by low-income plaintiffs. The affidavit of merit provisions front-load litigation costs and result in the creation of cottage industries of firms offering affidavits from physicians for a price. They also prevent meritorious medical malpractice actions from being filed. The affidavits of merit requirement obligates plaintiffs to engage in extensive pre-trial discovery to obtain the facts necessary for an expert to render an opinion resulting in most medical malpractice causes being settled out of court during discovery. Rather than reducing the problems associated with malpractice litigation, these provisions have resulted in the dismissal of legitimately injured plaintiffs' claims based solely on procedural, rather than substantive, grounds. (Internal citations omitted.)

¶23 We are not persuaded that, in and of itself, the Comprehensive Lawsuit Reform Act of 2009 indigency provision enacted in 12 O.S. 2011 §19(D) serves to fully remedy these ills.[38] The requirements for an indigency exception are set out in 12 O.S. 2011 §192.[39] It requires a nonrefundable application fee of $40.00. Although it is considerably less than the cost of complying with the affidavit of merit provisions, $40.00 is still a hurdle to the indigent. The fact that the court may defer the fee if it determines that the person does not have the financial resources to pay at the time does not go far enough. Even so, the fee cannot be waived, only deferred to a later date.[40] Access to the courts must be available to all

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[38] Title 12 O.S. 2011 §19(D) provides:

D. A plaintiff in a civil action for professional negligence may claim an exemption to the provisions of this section based on indigency pursuant to the qualification rules established as set forth in Section 4 of this act.

The statute found unconstitutional in Zeier contained no such exemption provision.

[39] Title 12 O.S. 2011 §192 provides:

A. When a plaintiff requests an indigency exemption from providing an affidavit of merit in a civil action for professional negligence pursuant to Section 2 of this act, such person shall submit an appropriate application to the court clerk, on a form created by the Administrative Director of the Courts, which shall state that the application is signed under oath and under the penalty of perjury and that a false statement may be prosecuted as such. A nonrefundable application fee of Forty Dollars ($40.00) shall be paid to the court clerk at the time the application is submitted, and no application shall be accepted without payment of the fee; except that the court may, based upon the financial information submitted, defer all or part of the fee if the court determines that the person does not have the financial resources to pay the fee at time of application. Any fees collected pursuant to this subsection shall be retained by the court clerk, deposited in the Court Clerk's Revolving Fund, and reported quarterly to the Administrative Office of the Courts.

B. 1. The Supreme Court shall promulgate rules governing the determination of indigency pursuant to the provisions of Section 22 of this act. The initial determination of indigency shall be made by the Chief Judge of the Judicial District or a designee thereof, based on the plaintiff's application and the rules provided herein.

2. Upon promulgation of the rules required by law, the determination of indigency shall be subject to review by the Presiding Judge of the Judicial Administrative District. (Internal citations omitted).

[40] Title 12 O.S. 2011 §192(A), see note 39, supra.

comers through simple and direct means and the right must be administered in favor of justice rather than being bound by technicalities.[41] Claimants may not have their fundamental right of court access withheld merely for nonpayment of some liability or conditioned coercive collection devices.[42]

¶24 The Oklahoma Constitution does not anticipate that litigants will be burdened with the entire bill for maintenance of the court system.[43] The Oklahoma courts were never intended to be self-funded, and the increasing degree to which they have become so is disturbing. Despite our holding in Fent v. State *ex. rel.* Dep't of Human Services, 2010 OK 2, 236 P.3d 61, the judicial department of government is burdened with collecting fees for thirty seven entities—only seven of which have a relationship to the third branch of government. The Okla. Const. art. 2, §6, guarantees the right of individuals to access the courts, and while litigation does not have to be free and entirely at the public expense, at the very least the provision means that justice cannot be for sale. The idea that money cannot be used as a bar to deny justice long predates the Oklahoma Constitution, and is one of the fundamental values of our legal system.[44]

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[41] Zeier v. Zimmer, Inc., see note 34, supra at ¶26; Woody v. State *ex. rel.* Dept. of Corrections, 1992 OK 45, ¶10, 833 P.2d 257.

[42] Zeier v. Zimmer, Inc., see note 34, supra at ¶26.

[43] Barzellone v. Presley, see note 32, supra at ¶39; Mehdipour v. State ex rel. Dep't of Corrections, 2004 OK 19, ¶20, 90 P.3d 546.

[44] See In Re Lee, 1917 OK 458, 168 P. 53.

¶25 The Magna Carta, one of the oldest progenitors of American legal principles, states: "We will sell to no man, we will not deny or defer to any man, either justice or right."[45] When the cost of obtaining an affidavit of merit in professional negligence actions is added to the already high and increasingly rising cost of using the court system to resolve disputes, the result is that a line is crossed, and litigation costs go from being merely a hurdle to being an unconstitutional burden on accessing the courts.[46]

CONCLUSION

¶26 Pursuant to art. 2, §6 of the Oklahoma Constitution, access to the court system is a fundamental right. Likewise, the Okla. Const. art. 5, §46 prohibition against special laws and the Okla. Const. art. 2, §6 are intertwined and serve the

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[45] In Re Lee, see note 44, supra at 9 (quoting The Magna Carta, Ch. 39, 1215).

[46] We are not alone in finding the requirement of an affidavit of merit unconstitutional. In Putman v. Wenatchee Valley Medical Center, P.S., 216 P.3d 374, 376-77 (Wash. 2009), the Washington Supreme Court found that Washington's certificate of merit requirement unduly burdened the rights of the State's citizens to access the courts, and was therefore unconstitutional. In Putman, the court noted that the right to access the courts included the right of discovery authorized by the civil rules, a right interfered with by requiring a certificate of merit prior to discovery.

However, other states such as Georgia have found affidavit of merit requirements constitutional. In Walker v. Cromartie, 696 S.E.2d 654 (Ga. 2010), the Supreme Court of Georgia upheld an affidavit of merit requirement that applied generally to actions for professional negligence, not just those involving medical professionals. The court found that the requirement was not a special law merely because indigent defendants may not be able to afford the fees associated with obtaining an expert affidavit, holding that it applied uniformly to any person or entity bringing a lawsuit for professional negligence. However, the court did not address whether the requirement was a special law because it created subclasses of tort claims and victims. Further, Georgia's constitutional prohibition on special laws is not as extensive as Oklahoma's. Its uniformity clause provides:

> Laws of a general nature shall have uniform operation throughout this state and no local or special law shall be enacted in any case for which provision has been made by an existing general law, except that the General Assembly may by general law authorize local governments by local ordinance or resolution to exercise police powers which do not conflict with general laws.

Ga. Const. of 1983, Art. III, Sec. VI, Par. IV(a).

same ends. This is not new. It has been decided. This is the same issue we addressed in Zeier. Unless we ignore the Okla. Const. art. 2, §6 and art. 5, §46, the Oklahoma statute defining professional negligence found at 63 O.S. 2011 §1-1708.1C, and overrule Zeier v. Zimmer, 2006 OK 98, 152 P.3d 861, there is but one result we can reach.

¶27 Title 12 O.S. 2011 §19 creates a monetary barrier to access the court system, and then applies that barrier only to a specific subclass of potential tort victims, those who are the victims of professional negligence. The result is a law that is unconstitutional both as a special law, and as an undue financial barrier on access to the courts. Although we express no opinion on the viability of the patient's claim, because we hold 12 O.S. 2011 §19 to be unconstitutional, an affidavit of merit is not required. Therefore, we need not address the patient's claim that his *res ipsa loquitur* argument would circumvent the requirements of 12 O.S. 2011 §19. The district court's order requiring submission of an affidavit of merit is overruled, and this cause is remanded for further proceedings consistent with this opinion.

CERTIORARI PREVIOUSLY GRANTED;
ORDER OF THE DISTRICT COURT OVERRULED;
REMANDED FOR FURTHER PROCEEDINGS.

COLBERT, C.J., REIF, V.C.J., KAUGER, WATT, EDMONDSON, COMBS, GURICH, JJ., concur.

WINCHESTER and TAYLOR, JJ., dissent.

2013 OK 36

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

TIMOTHY WALL,	)	
	)	
Appellant,	)	
	)	
v.	)	No. 109,005
	)	FOR OFFICIAL PUBLICATION
JOHN S. MAROUK, D.O.,	)	
	)	
Appellee.	)	

WINCHESTER, J., dissenting:

¶1 I respectfully dissent. I cannot agree that 12 O.S.2011, § 19 is unconstitutional as a special law. The majority opinion asserts that this statute "creates a new subclass of tort victims and tortfeasors known as professional tort victims and tortfeasors." Oklahoma's case law already recognizes such a "subclass" of tort law, and that is "malpractice." The rule where medical malpractice against a physician is alleged, whether it is for failure to properly diagnose or treat a patient, is that the physician's negligence must ordinarily be established by expert testimony. *Smith v. Hines*, 2011 OK 51, ¶ 14, 261 P.3d 1129, 1133; *Harder v. F.C. Clinton, Inc.*, 1997 OK 137, ¶ 14, n. 30, 948 P.2d 298, 305, n. 30; *Benson v. Tkach*, 2001 OK CIV APP 100, ¶ 10, 30 P.3d 402, 404. The statute merely requires an affidavit at the time of filing. Is it reasonable to require expert testimony in a malpractice case, but forbid the legislature from

requiring that an expert submit an affidavit at the front end of a lawsuit? I do not believe it is.

¶2 The difference between a standard negligence case and professional malpractice is recognized even in the business law books studied by undergraduates and MBA students.

> "If an individual has knowledge or skill superior to that of an ordinary person, the individual's conduct must be consistent with that status. Professionals—including physicians, dentists, architects, engineers, accountants, and lawyers, among others—are required to have a standard minimum level of special knowledge and ability. Therefore, in determining what constitutes reasonable care in the case of professionals, the law takes their training and expertise into account. Thus, an accountant's conduct is judged not by the reasonable person standard, but by the reasonable accountant standard." Kenneth W. Clarkson, Roger LeRoy Miller & Frank B. Cross, *Business Law Text and Cases* 139 (12th ed. 2012).

¶3 Georgia's statute requiring an affidavit is not identical to Oklahoma's statute. However, the reasoning of the Supreme Court of Georgia is pertinent to the construction of Oklahoma's statute. Georgia's statute also requires an affidavit from an expert to be filed with the complaint for professional negligence. Its supreme court recognized that the statute itself did not impose a cost or fee for filing an expert affidavit. Neither does § 19. In addressing a due process argument, Georgia's court observed: "The 'costs' appellants object to are created by private actors, not any state actor. Since no state actor has exacted the harm of which appellants complain, the statute does not violate the right to due process." *Walker v. Cromartie*, 287 Ga. 511, 512, 696 S.E.2d 654, 656 (2010). If this Court reasons that the legislature's requirement of an expert affidavit is

financially burdensome, is it somehow less burdensome to require an expert to testify to the negligence of the defendant during the trial stage? Case law requires such expert testimony. Surely it is clear that the cost of an expert affidavit is less than the cost of actual expert testimony, both of which are presently required, one by the legislature and the other by this Court.

¶4 The majority protests that court costs have reached the tipping point and can go no higher. The legislature has provided, through the statute, for a simple exemption that may be signed by plaintiffs to express to the court their inability to pay for the § 19 affidavit. The Supreme Court is very liberal and experienced in allowing indigent petitions. I see no reason for this Court to fail to recognize an indigent affidavit for professional negligence cases.

¶5 Accordingly, I dissent.

2013 OK 36

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

TIMOTHY WALL,	)	
	)	
Appellant,	)	
	)	
v.	)	No. 109,005
	)	
JOHN S. MAROUK, D.O.,	)	
	)	
Appellee.	)	

TAYLOR, J., dissenting:

¶1 Even though I concurred in result in *Zeier v. Zimmer, Inc.*, 2006 OK 98, 152 P.3d 861, I must respectfully dissent from today's pronouncement. There are two major differences in the statute which this Court found unconstitutional in *Zeier* and in title 12, section 19 of the 2011 Oklahoma Statutes which is before us today. First, section 19 is not limited to medical negligence as was the provision in *Zeier* but includes all professional negligence. 12 O.S.2011, § 19(A)(1). Second, it provides for an indigency exemption to the certificate of merit requirement. *Id.* § 19(D).

¶2 In *Zeier*, this Court struck down section 1-1708.1E of the Affordable Access to Health Care Act, 63 O.S.Supp. 2003, § 1-1708.1E, which required a certificate of merit only in medical malpractice actions. The Legislature responded to *Zeier* by enacting title 12, section 19 of the Oklahoma Statutes, which expanded the certificate of merit requirement to all professional negligence. Now section 19

is under attack in this appeal as a special law in violation of article 5, section 46 of the Oklahoma Constitution.

¶3 In construing section 19, this Court is guided by the overarching principle that every statute is presumed constitutional and will be upheld until its constitutional invalidity is clearly shown. *Wilson v. Fallin*, 2011 OK 76, ¶ 21, 262 P.3d 741, 748. Further, this Court is to presume that the Legislature has not done a vain and useless act. *Surety Bail Bondsmen of Okla., Inc. v. Insurance Comm'r*, 2010 OK 73, ¶ 26, 243 P.3d 1177, 1185. Following these principles leads to the conclusion that the Legislature did not intend the term "professional negligence" to have the identical meaning as "medical liability." Rather, consistent with these principles, section 19 must be construed as expanding the class to which the certificate of merit requirement applies to include all negligence actions against any professional. Further, this Court itself has taken a more expansive approach by using the term "professional negligence" in reference to actions against lawyers, *Leak-Gilbert v. Fahle*, 2002 OK 66, 55 P.3d 1054; realtors, *Rice v. Patterson*, 1993 OK 103, 857 P.2d 71; and engineers, *Samuel Robert Noble Foundation, Inc. v. Vick*, 1992 OK 140, 840 P.2d 619.

¶4 It would certainly have been a vain and useless act for the Legislature to enact a statutory provision that this Court had determined to be unconstitutional only three years earlier. By expanding the class of torts requiring a certificate of merit to professional negligence, the Legislature remedies the concerns this Court

expressed in *Zeier* regarding section 1-1708.1E of the Affordable Access to Health Care Act. I would find that title 12, section 19 of the Oklahoma Statutes does not offend article 5, section 46 of the Oklahoma Constitution.

¶5 I would likewise find that section 19 does not offend article 2, section 6 of the Oklahoma Constitution. The impediment that this Court found to the cost of procuring an expert's opinion before trial, the Legislature addressed in title 12, section 19(D) by providing for an indigency exemption and leaving the Judicial Branch with authority to define indigency. *See* 20 O.S.2011, § 56. Title 12, section 192 imposes a nonrefundable application fee of $40.00 on a plaintiff seeking an indigency exemption but this fee can be deferred. If the $40 fee is a constitutional impediment, then striking only the $40.00 fee for the indigency exemption as violative of article 2, section 6, rather than striking down the certificate of merit requirement, gives the appropriate measure of deference to the Legislature. There are other procedures in place to address any impediment of access to the courts: this Court could define indigency in such a manner as to alleviate any monetary obstruction that the certificate of merit requirement creates.

¶6 In deference to the Legislature and the rules of statutory construction, I would construe title 12, section 19 in a way to find that it does not violate article 5, section 46 of the Oklahoma Constitution. I would also exercise this Court's power in as narrow a swath as possible rather than the most extensive.

2013 OK 37
IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CAROL A. DOUGLAS, Administratrix of the Estate of Richard Lee Douglas, deceased,	)	
Plaintiff-Petitioner,	)	
v.	)	Case No. 110,270
COX RETIREMENT PROPERTIES, INC., an Oklahoma Corporation,	)	**FOR OFFICIAL PUBLICATION**
Defendant-Respondent.	)	

ON APPEAL FROM THE DISTRICT COURT OF TULSA COUNTY, STATE OF OKLAHOMA, HONORABLE REBECCA BRETT NIGHTINGALE

¶ 0 Plaintiff filed a wrongful death action in Tulsa County against the Defendant, Cox Retirement Properties, alleging Richard Douglas died as a result of the facility's negligent care and treatment. Defendant moved to dismiss the case for Plaintiff's failure to comply with 12 O.S. Supp. 2009 § 19. Section 19 was enacted in 2009 as part of H.B. 1603, which is commonly known as the Comprehensive Lawsuit Reform Act of 2009. Plaintiff responded to the motion to dismiss, arguing the CLRA of 2009 was unconstitutional logrolling in violation of the single-subject rule of Article 5, § 57 of the Oklahoma Constitution. The trial court granted the Defendant's Motion to Dismiss and certified the dismissal order for immediate review. We granted Plaintiff's Petition for Certiorari to Review Certified Interlocutory

Order. We hold that H.B. 1603 violates the single-subject rule of Article 5, § 57 of the Oklahoma Constitution and is unconstitutional and void in its entirety.

TRIAL COURT'S ORDER DISMISSING CASE IS REVERSED; CAUSE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH TODAY'S PRONOUNCEMENT

Steven R. Hickman
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Tulsa, Oklahoma, Attorney for Plaintiff-Petitioner

Michael Carr, Anne Cardea
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Tulsa, Oklahoma, Attorneys for Defendant-Respondent

Randy Lewin
Richards & Connor
Tulsa, Oklahoma, Attorney for Amicus Curiae Oklahoma Association of Defense Counsel

GURICH, J.

Facts & Procedural History

¶ 1 On April 2, 2009, Richard Douglas was admitted to the Defendant's rehabilitative care center for extended care. Douglas remained at the facility for approximately 21 days and was discharged on April 23, 2009. He died a short time later on May 12, 2009. The decedent's estate filed a wrongful death action in Tulsa County against the Defendant, alleging Douglas died as a result of the facility's negligent care and treatment.

¶ 2 Defendant moved to dismiss the case for Plaintiff's failure to comply with 12 O.S. Supp. 2009 § 19. Section 19 was enacted in 2009 as part of H.B. 1603, which is commonly known as the Comprehensive Lawsuit Reform Act of 2009. Plaintiff responded to the motion to dismiss, arguing that the CLRA of 2009 was unconstitutional logrolling in violation of the single-subject rule of Article 5, § 57 of the Oklahoma Constitution.[1] The trial court granted Defendant's Motion to Dismiss and certified the dismissal order for immediate review.[2] Plaintiff filed a Petition for Certiorari on January 9, 2012, and we granted review on February 14, 2012.

Standard of Review

¶ 3 "In considering a statute's constitutionality, courts are guided by well-established principles and a heavy burden is cast on those challenging a legislative enactment to show its unconstitutionality." Thomas v. Henry, 2011 OK 53, ¶ 8, 260 P.3d 1251, 1254 (citing Fent v. Okla. Capitol Improvement Auth., 1999 OK 64, ¶ 3, 984 P.2d 200, 204). "Every presumption is to be

[1] Today this Court also issued an opinion in Timothy Wall v. John S. Marouk, D.O., 2013 OK 36, ____P.3d____, which disposes of Plaintiff's additional argument that the requirement for filing affidavits in malpractice cases was conclusively decided by this Court in Zeier v. Zimmer, 2006 OK 98, 152 P.3d 861. Therefore, we will not address the issue in this opinion.

[2] Ordinarily, an order dismissing a case is a final, appealable order unless the trial court grants leave to amend the petition to cure the defect. Kelly v. Abbott, 1989 OK 124, ¶ 10, 781 P.2d 1188, 1191. If leave to amend is granted, the order dismissing the case is an interlocutory order and does not become final until the petition is not amended within the time set by the trial court. Id. In this case, the trial court dismissed the action but gave the Plaintiff 30 days to file the affidavit required by 12 O.S. Supp. 2009 § 19. The trial court also certified the order for immediate review and ordered: "If Plaintiff chooses to file a certified interlocutory appeal of this Order, and not file the required affidavit, then the proceedings shall be stayed pending disposition of the interlocutory appeal by separate order to be filed by this Court." Journal Entry Sustaining Defendant's Motion to Dismiss at 2. Rather than filing the affidavit, Plaintiff appealed the order and filed a Petition for Certiorari to Review Certified Interlocutory Order with this Court.

indulged in favor of the constitutionality of a statute." Id. "It is also firmly recognized that it is not the place of this Court, or any court, to concern itself with a statute's propriety, desirability, wisdom, or its practicality as a working proposition." Fent, 1999 OK 64, ¶ 4, 984 P.2d 200, 204. "A court's function, when the constitutionality of a statute is put at issue, is limited to a determination of the validity or invalidity of the legislative provision and a court's function extends no farther in our system of government." Id.

Analysis

¶ 4 The issue before us is the applicability of the single-subject rule of Article 5, § 57 of the Oklahoma Constitution to H.B. 1603. Article 5, § 57 of the Oklahoma Constitution provides: "Every act of the Legislature shall embrace but one subject, which shall be clearly expressed in its title . . . ." Okla. Const. art. 5, § 57. This provision is commonly known as the single-subject rule. The purposes of the single-subject rule are to ensure the legislators or voters of Oklahoma are adequately notified of the potential effect of the legislation and to prevent logrolling. Nova Health Sys. v. Edmondson, 2010 OK 21, 233 P.3d 380. Logrolling is the practice of ensuring the passage of a law by creating one choice in which a legislator or voter is forced to assent to an unfavorable provision to secure passage of a favorable one, or conversely, forced to vote against a favorable provision to ensure an unfavorable provision is not enacted. Id.

¶ 5 This Court has long rejected a broad, expansive approach to the single-subject rule. Campbell v. White, 1993 OK 89, ¶ 14, 856 P.2d 255, 258. In Campbell, we stated that the Legislature's "skillful drafting of a broad topic" defeats the purpose of the single-subject rule. Id. We reaffirmed such an approach in Weddington v. Henry, 2008 OK 102, 202 P.3d 143, where we struck down a bill whose subject was "uniform laws." In Fent v. State ex rel. Okla. Capitol Improvement Auth., 2009 OK 15, ¶ 20, 214 P.3d 799, 806, Nova Health Systems, 2010 OK 21, 233 P.3d 380, and Thomas, 2011 OK 53, ¶ 27, 260 P.3d at 1260, we continued to reject a broad, expansive approach to the single-subject rule.

¶ 6 In Thomas we reiterated that Oklahoma adheres to the germaneness test.[3] Id. ¶ 26, 260 P.3d at 1260. The most relevant question under such an analysis is whether a voter, or legislator, is able to make a choice without being misled and is not forced to choose between two unrelated provisions contained in one measure. Id. The question is not how similar two provisions in a proposed law are, but whether it appears that the proposal is misleading or that the provisions in the proposal are so unrelated that those voting on the law would be faced with an all-or-nothing choice. Id. The purpose is not to hamper legislation but to prevent the Legislature from making a bill "veto

[3] Other opinions discussing the single-subject rule include: Nova Health Sys., 2010 OK 21, 233 P.3d 380; Fent, 2009 OK 15, 214 P.3d 799; Weddington, 2008 OK 102, 202 P.3d 143; Fent v. Office of State Finance, 2008 OK 2, 184 P.3d 467; In re: Initiative Petition No. 382, State Question No. 729, 2006 OK 45, 142 P.3d 400; Edmondson v. Pearce, 2004 OK 23, 91 P.3d 605; Morgan v. Daxon, 2001 OK 104, 49 P.3d 687; Campbell, 1993 OK 89, 856 P.2d 255; Johnson v. Walters, 1991 OK 107, 819 P.2d 694.

proof" by combining two totally unrelated subjects in one bill. Id. If a bill contains multiple provisions, the provisions must reflect a common, closely akin theme or purpose. Id. ¶ 27, 260 P.3d at 1260.

¶ 7 H.B. 1603 contains 90 sections, encompassing a variety of subjects that do not reflect a common, closely akin theme or purpose. The first 24 sections of H.B. 1603 amend and create new laws within our civil procedure code found in Title 12. Many of these provisions have nothing in common. For example, Section 3 purports to give a trial court the authority to transfer a case to another state. Section 10 creates a law that assists the Oklahoma Healthcare Authority in collecting refunds for the Medicaid program. In Section 13, the Legislature adopts a portion of the federal civil procedure code to control a state court action.

¶ 8 Of the remaining 66 sections of H.B. 1603, 45 sections create entirely new Acts, which have nothing in common with each other, including The Uniform Emergency Volunteer Health Practitioners Act, The Common Sense Consumption Act, The Asbestos and Silica Claims Priorities Act, The Innocent Successor Asbestos-Related Liability Fairness Act, and The School Protection Act. For example, sections 43 through 46 create The Common Sense Consumption Act. The Act creates immunity from suit **only** for entities defined under the federal Food, Drug, and Cosmetic Act, and by its terms eliminates remedies for certain injured consumers. Sections 54 through 65 create the

Asbestos and Silica Claims Priorities Act. Section 58(A) limits a physician's ability to testify in asbestos and silica litigation based upon his or her education, training, and experience, and instead requires adherence to the AMA Guides to the Evaluation of Permanent Impairment (5th Edition) (2000).

¶ 9 Other dissimilar sections of H.B. 1603 amend the Mandatory Seat Belt Use Act and the Oklahoma Livestock Activities Liability Limitation Act, limit the liability of firearm manufacturers, and amend existing laws regarding school discipline. H.B. 1603 also creates a new law that a school district representative may not conduct or preside as the hearing officer or judge at a due process hearing and then attend, advise, or influence an executive session of the school board.[4]

¶ 10 This Court finds the Legislature's use of the broad topic of lawsuit reform does not cure the bill's single-subject defects. Campbell, 1993 OK 89, ¶ 14, 856 P.2d at 258. Although the Defendant argues the CLRA of 2009 does not constitute logrolling because the provisions within it are not so misleading as to create for a legislator an all-or-nothing choice, we find the provisions are so unrelated that those voting on the law were faced with an all-or-nothing choice to ensure the passage of favorable legislation.

[4] The Defendant argues that this section, section 74, was repealed, so H.B. 1603 is cured of its single-subject defects. Section 74 is not the only section that violates the single-subject rule. However, even if it were, it has not been repealed as the Defendant claims. Section 74 was passed in two different bills in the 2009 session—H.B. 1603 (CLRA of 2009) and H.B. 1598. *H.B. 1598* was repealed so as to prevent duplicate statutes. Section 74, as it was enacted in H.B. 1603, remains intact at 70 O.S. 2011 § 6-101.7 and has not been repealed.

¶ 11 Unlike in Thomas, where the Court severed the offending provision of the Oklahoma Taxpayer and Citizens Protection Act of 2007, H.B. 1603 encompasses so many different subjects that severance is not an option.[5] It would be both dangerous and difficult for this Court to engage in the exercise of severance in this case. By picking and choosing which provisions relate to lawsuit reform and which do not, this Court would essentially become the policy-maker. Policy-making is the job of the Legislature. And although the dissenters argue we should sever the unconstitutional portions of this bill, the separate writing does not provide an analysis of how severance should be accomplished. Additionally, unlike in Thomas, were we to sever all the invalid portions of H.B. 1603, we could not presume the Legislature would have enacted the remaining provisions of the bill without the voided provisions.[6]

[5] Although the bulk of the Act in Thomas dealt with discouraging illegal immigration, only one section was found to violate the single-subject rule. Thomas, 2011 OK 53, ¶ 31, 260 P.3d at 1262. The bill had 13 sections, and this Court found Section 13 of the bill, which sought to amend 70 O.S. Supp. 2006 § 3242(A)(1) and (2) so as to deny resident tuition for higher education to those who successfully completed the GED examination, did not relate to the common theme of discouraging illegal immigration and should be severed. Id. ¶ 31, 260 P.3d at 1262.

[6] 75 O.S. § 11a(1) reads:

> In the construction of the statutes of this state, the following rules shall be observed:
>
> 1. For any act enacted on or after July 1, 1989, unless there is a provision in the act that the act or any portion thereof or the application of the act shall not be severable, the provisions of every act or application of the act shall be severable. If any provision or application of the act is found to be unconstitutional and void, the remaining provisions or applications of the act shall remain valid, unless the court finds:
>
> a. the valid provisions or application of the act are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the Legislature would have enacted the remaining valid provisions without the void one; or

Conclusion

¶ 12 This is not the first time we have invalidated a bill in its entirety for violation of the single-subject rule.[7] Although we are mindful of the practical consequences of today's decision, we will not sit by and ignore violations of our Constitution. The Legislature should be well aware of the single-subject requirements of the Oklahoma Constitution. We do not doubt that tort reform is an important issue for the Legislature. **But the constitutional infirmity of logrolling, which is the basis of this opinion, can only be corrected by the Legislature by *considering the acts* within the CLRA of 2009 *separately.*[8]** We hold that H.B. 1603, commonly known as the Comprehensive Lawsuit Reform Act of 2009, violates the single-subject rule of Article 5, § 57 of the Oklahoma Constitution. The bill is unconstitutional and void in its entirety.

TRIAL COURT'S ORDER DISMISSING CASE IS REVERSED; CAUSE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH TODAY'S PRONOUNCEMENT

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b. the remaining valid provisions or applications of the act, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

[7] See Nova Health Sys., 2010 OK 21, 233 P.3d 380 (finding that S.B. 1878, which comprised portions of five separate bills and involved multiple subjects concerning freedom of conscience, obviously violated the single-subject rule and was void in its entirety); Weddington, 2008 OK 102, 202 P.3d 143 (finding that S.B. 1708, which related to uniform laws, was facially contrary to Article 5, § 57 and void in its entirety).

[8] Although our opinion in Nova Health Systems, 2010 OK 21, 233 P.3d 380, was decided after the CLRA of 2009 was passed, in that case we explicitly told the Legislature that if it believed the subjects involved in a particular bill were important, it should enact those subjects in separate bills. We reiterate that idea today.

¶ 13 Colbert, C.J., Reif, V.C.J., Watt, Edmondson, Combs, and Gurich, JJ., concur.

¶ 14 Kauger, J., (by separate writing) concurs specially.

¶ 15 Winchester, J., (by separate writing) and Taylor, J. (joins Winchester) dissent.

2013 OK 37

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CAROL A. DOUGLAS, Administratrix of the Estate of Richard Lee Douglas, deceased,	)	
Plaintiff-Petitioner,	)	
v.	)	Case No. 110,270
	)	FOR OFFICIAL PUBLICATION
COX RETIREMENT PROPERTIES, INC., an Oklahoma Corporation,	)	
Defendant-Respondent.	)	

KAUGER, J. concurring specially:

I.
INTRODUCTION

¶1 The issue of the legislative amendment to 12 O.S. 2011 §19 in the aftermath of Zeier v. Zimmer, 2006 OK 98, 152 P.3d 861, was resolved in Timothy Wall v. John S. Marouk, D.O., 2013 OK 36, --- P.3d ---, which we promulgated today. After we held it to be unconstitutional, I had hoped that if only a small number of sections of the CLRA were infirm and unrelated, they could safely be severed. However, the bill is simply too large, and attempts to address too many subjects, to be reconciled with the requirements of the Okla. Const., art. 5, §57.[1]

[1] The Okla. Const., Art. 5, §57 provides:

II.
SECTION 74 OF THE CLRA VIOLATES THE OKLA. CONST., ART. 5, §57.

¶2 The respondents have conceded that 2009 Okla. Session. Laws ch. 228, sec. 74, might have constituted logrolling. Petitioner charges that because it places limits on a lawyer's representation in school board hearings on teacher terminations, it violates the single subject rule, and renders the CLRA an unconstitutional violation of Okla. Const., art. 5, §57.[2]

¶3 Respondent, however, argues that §74 of the CLRA was subsequently repealed, and therefore no longer constitutes a part of the corpus of the legislation

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Every act of the Legislature shall embrace but one subject, which shall be clearly expressed in its title, except general appropriation bills, general revenue bills, and bills adopting a code, digest, or revision of statutes; and no law shall be revived, amended, or the provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred shall be re-enacted and published at length: Provided, That if any subject be embraced in any act contrary to the provisions of this section, such act shall be void only as to so much of the laws as may not be expressed in the title thereof.

[2] 2009 Okla. Session. Laws ch. 228, sec. 74 provides:

SECTION 74. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-101.7 of Title 70, unless there is created a duplication in numbering, reads as follows:

An attorney, representative, or other designee of the school district who has represented or represents a school district or the administration of a school district at a hearing held for the purpose of affording due process rights and requirements for an administrator as provided for in Section 6-101.13 of Title 70 of the Oklahoma Statutes, a teacher as provided for in Section 6-101.26 of Title 70 of the Oklahoma Statutes, or a support employee as provided for in Section 6-101.46 of Title 70 of the Oklahoma Statutes or who has been involved or participated in any prehearing actions of the school district with respect to a recommendation for the termination of employment or nonreemployment of an administrator, teacher, or support employee shall not:

1. Conduct or preside as the hearing officer or judge at a due process hearing or hearings; and

2. Attend, advise at, or in any way influence an executive session of the school district board of education that is held in conjunction with a due process hearing or hearings if the attorney, representative, or other designee of the school district conducted or presided over the due process hearing or hearings as the hearing officer or judge.

contained within the CLRA.[3] This argument is also made by the Oklahoma Association of Defense Counsel in its Amicus Curiae brief:

> The only other section of the Act cited by Petitioner is the portion banning attorneys in certain situations from participating in school employee termination hearings. This section of the law has indisputably been repealed. It is no longer part of the Act, so any question of whether this section made the law unconstitutional is moot.[4]

Respondent made the same point during the August 30, 2011, hearing on its motion to dismiss, stating that "[t]he provision regarding teachers has been – or, excuse me, regarding due process hearing for teachers has been repealed .... Clearly that argument goes by the wayside."[5] The arguments are unconvincing because the language of §74 remains part of the Oklahoma Statutes. It is found at 70 O.S. 2011 §6-101.7.[6]

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[3] Respondent's Answer Brief, p. 2

[4] Amicus Curiae Brief of Oklahoma Association of Defense Counsel, p. 3.

[5] Transcript of Proceedings had on August 11, 2011 in the District Court of Tulsa County, 5:13-15.

[6] Title 70 O.S. 2011 §6-101.7 provides:

An attorney, representative, or other designee of the school district who has represented or represents a school district or the administration of a school district at a hearing held for the purpose of affording due process rights and requirements for an administrator as provided for in Section 6-101.13 of Title 70 of the Oklahoma Statutes, a teacher as provided for in Section 6-101.26 of Title 70 of the Oklahoma Statutes, or a support employee as provided for in Section 6-101.46 of Title 70 of the Oklahoma Statutes or who has been involved or participated in any prehearing actions of the school district with respect to a recommendation for the termination of employment or nonreemployment of an administrator, teacher, or support employee shall not:

1. Conduct or preside as the hearing officer or judge at a due process hearing or hearings; and

2. Attend, advise at, or in any way influence an executive session of the school district board of education that is held in conjunction with a due process hearing or hearings if the attorney, representative, or other designee of the school district conducted or presided over the due process hearing or hearings as the hearing officer or judge.

III.
OTHER PROVISIONS OF THE CLRA ALSO VIOLATE THE OKLA CONST., ART. 5, §57.

¶4 If §74 had been repealed or was by itself severable from the CLRA,[7] it is not the only offending provision in the CLRA that renders the Act itself in violation of the Okla. Const., art. 5, §57. In addition to changes to the civil procedure code, 12 O.S. §1 *et seq.*, H.B. 1603 also creates entirely new Acts in other titles, such as the Uniform Emergency Volunteer Health Practitioners Act, The Common Sense Consumption Act, The Asbestos and Silica Claims Priorities Act, The Innocent Successor Asbestos-Related Liability Fairness Act, and the School Protection Act.

¶5 For example, §§31-41 of the CLRA create the Uniform Emergency Volunteer Health Practitioners Act.[8] Sections 33-35 detail the creation of a registration system for volunteer health practitioners who will provide health or veterinary services in the state in the event of an emergency declaration.[9] Section 35, in particular, details the requirements a registration system must fulfill to satisfy the new law.[10] An examination of §§31-41 reveals a comprehensive new

[7] Respondent asserts that even if Section 74, or any other part of the CLRA, were unconstitutional, they could be severed, allowing the CLRA itself to remain valid and in force. Respondent's Reply Brief, p. 5. In Thomas v. Henry, 2011 OK 53, ¶31, 260 P.3d 1251, we held that severability was a possibility where the valid provisions of an act were not essentially and inseparably connected with and dependent on the invalid portion.

[8] 2009 Okla. Session. Laws ch. 228, secs. 31-42.

[9] 2009 Okla. Session. Laws ch. 228, secs. 33-35, see note 13, infra.

[10] 2009 Okla. Session. Laws ch. 228, secs. 33-35 provides:

SECTION 35. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 684.18 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. To qualify as a volunteer health practitioner registration system, a system must:

1. Accept applications for the registration of volunteer health practitioners before or during an emergency;

2. Include information about the licensure and good standing of health practitioners which is accessible by authorized persons;

3. Be capable of confirming the accuracy of information concerning whether a health practitioner is licensed and in good standing before health services or veterinary services are provided under the Uniform Emergency Volunteer Health Practitioners Act; and

4. Meet one of the following conditions:

a. be an emergency system for advance registration of volunteer health practitioners established by a state and funded through the Health Resources Services Administration under Section 319I of the Public Health Services Act, 42 U.S.C., Section 247d-7b,

b. be a local unit consisting of trained and equipped emergency response, public health, and medical personnel formed pursuant to Section 2801 of the Public Health Services Act, 42 U.S.C., Section 300hh,

c. be operated by a:

(1) disaster relief organization,

(2) licensing board,

(3) national or regional association of licensing boards or health practitioners,

(4) health facility that provides comprehensive inpatient and outpatient health-care services, including a tertiary care and teaching hospital, or

(5) governmental entity, or

d. be designated by the State Department of Health as a registration system for purposes of the Uniform Emergency Volunteer Health Practitioners Act.

B. While an emergency declaration is in effect, the State Department of Health, a person authorized to act on behalf of the Department, or a host entity may confirm whether volunteer health practitioners utilized in this state are registered with a registration system that complies with subsection A of this section. Confirmation is limited to obtaining identities of the practitioners from the system and determining whether the system indicates that the practitioners are licensed and in good standing.

C. Upon request of a person in this state authorized under subsection B of this section, or a similarly authorized person in another state, a registration system located in this state shall notify the person of the identities of volunteer health practitioners and whether the practitioners are licensed and in good standing.

D. A host entity shall not be required to use the services of a volunteer health practitioner even if the practitioner is registered with a registration system that indicates that the practitioner is licensed and in good standing.

set of laws for new categories of volunteer emergency workers, with no basis in lawsuit reform or civil procedure.

¶6 Other provisions are indicative of the same fatal flaws. Sections 75-83, creating the School Protection Act, create a new criminal offense for making false accusations of criminal conduct against an education employee.[11] It is difficult to argue that modifications to the criminal code are germane to the reform of civil procedure. Even if the stated goal is to prevent false accusations, the connection is simply too tenuous to say that the School Protection Act shares the same subject as something like the Uniform Emergency Volunteer Health Practitioners Act. They are not germane to each other, other CLRA provisions, or the subject of the bill, civil procedure.

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[11] 2009 Okla. Session. Laws ch. 228, secs. 75-83. Specifically, 2009 Okla. Session. Laws ch. 228, sec. 78 provides:

SECTION 78. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-143 of Title 70, unless there is created a duplication in numbering, reads as follows:

A. Except as otherwise provided in this section, any person eighteen (18) years of age or older who acts with specific intent in making a false accusation of criminal activity against an education employee to law enforcement authorities or school district officials, or both, shall be guilty of a misdemeanor and, upon conviction, punished by a fine of not more than Two Thousand Dollars ($2,000.00).

B. Except as otherwise provided in this section, any student between seven (7) years of age and seventeen (17) years of age who acts with specific intent in making a false accusation of criminal activity against an education employee to law enforcement authorities or school district officials, or both, shall, upon conviction, at the discretion of the court, be subject to any of the following:

1. Community service of a type and for a period of time to be determined by the court; or

2. Any other sanction as the court in its discretion may deem appropriate.

C. The provisions of this section shall not apply to statements regarding individuals elected or appointed to an educational entity.

D. This section is in addition to and does not limit the civil or criminal liability of a person who makes false statements alleging criminal activity by another.

¶7 The respondent has failed to address any of the other disparate provisions of the CLRA, beyond §74, in its reply brief. During the hearing held on August 30, 2011, the Respondent mentioned[12] §25 of the CLRA, which created a Health Care Indemnity Fund Task Force.[13] Respondent argued that this particular section

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[12] Transcript of Proceedings had in the District Court of Tulsa County on August 30, 2011, at 5:15-19.

[13] 2009 Okla. Session. Laws ch. 228, sec. 25 provides:

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2211 of Title 36, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the "Health Care Indemnity Fund Task Force".

B. The task force shall study a mechanism for creating a health care indemnity fund for purposes of paying a portion of damages awarded by the court or settled and approved by the court in professional negligence cases against physicians as defined in subsection I of Section 24 of this act. The task force shall study the following issues:

1. Funding, expenses and investments;

2. Capping the fund at a rate of Twenty Million Dollars ($20,000,000.00) annually;

3. Limiting damage award payments from the fund to:

a. professional negligence cases against physicians where the noneconomic damage cap has been removed, and

b. only that amount of damages that exceed the noneconomic damage cap of Four Hundred Thousand Dollars ($400,000.00) per occurrence;

4. Purchase of reinsurance;

5. Professional liability insurance coverage requirements, in an amount of no less than One Million Dollars ($1,000,000.00) for physicians;

6. Qualifications for coverage under the fund;

7. Applicant, compliance, payment and rating procedures; and

8. Any other issues necessary for creating a health care indemnity fund.

C. The task force shall be composed of eight (8) members as follows:

1. The Oklahoma Insurance Commissioner or designee;

2. Three members appointed by the Governor;

3. Two members appointed by the President Pro Tempore of the Senate, one of whom shall be a physician; and

was no longer a problem because the statute had already lapsed by its own terms.[14] Presumably Respondent was referring to the fact that the provision required the task force to report its findings and recommendations to the President Pro Tempore of the Senate and the Speaker of the House of Representatives by May 1, 2011, after which its purpose would be fulfilled.[15]

¶8 The various pieces of the CLRA do not reflect a common, closely akin theme or purpose.[16] The application of broad, sweeping categories such as civil procedure and lawsuit reform do not change the fact that the Constitution will not allow unrelated legislation to be included in a single enactment simply by the skillful drafting of a broad topic.[17] In Nova Health Systems v. Edmondson, 2010

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4. Two members appointed by the Speaker of the House of Representatives, one of whom shall be a physician.

D. The task force may meet as often as necessary to perform the duties imposed upon it. Members of the task force shall receive no compensation for their services, but shall receive travel reimbursement as follows:

1. Legislative members of the task force shall be reimbursed for necessary travel expenses incurred in the performance of their duties in accordance with the provisions of Section 456 of Title 74 of the Oklahoma Statutes; and

2. Nonlegislative members of the task force shall be reimbursed for necessary travel expenses incurred in the performance of their duties in accordance with the State Travel Reimbursement Act.

E. The task force shall be authorized to hire actuarial or any other professional services necessary to perform the duties imposed on it.

F. A quorum of the task force shall be required for any final action, and shall report its findings and recommendations to the President Pro Tempore of the Senate and the Speaker of the House of Representatives not later than May 1, 2011.

[14] Transcript of Proceedings had in the District Court of Tulsa County on August 30, 2011, at 5:15-19.

[15] 2009 Okla. Session. Laws ch. 228, sec. 25(F).

[16] Thomas v. Henry, see note 7, supra at ¶27.

[17] Campbell v. White, 1993 OK 89, ¶14, 856 P.2d 255.

OK 21, ¶3, 233 P.3d 380, we explained the rational for the single subject rule. We said:

> ... Each subject brought into the deliberation of the legislative department of the government is to be considered and voted on singly, without having associated with it any other measure to give it strength. Experience had shown that measures having no common purpose, and each wanting sufficient support on its merits to secure its enactment, have been carried through legislative bodies and enacted into laws, when neither measure could command or merit the approval of a majority of that body.

IV.
HISTORY OF THE SINGLE SUBJECT RULE

¶9 Addressing the violation of the single subject rule is a recurring theme in our jurisprudence. At the time of our 2010 holding in Nova Health Systems v. Edmondson, 2010 OK 21, 233 P.3d 380, we had addressed the single subject rule at least seven times over the previous two decades, and four times in three years, in the following cases: Fent v. State of Oklahoma *ex. rel.* Oklahoma Capitol Improvement Authority, 2009 OK 15, ¶¶10-23, 214 P.3d 799; Fent v. State *ex. rel.* Office of State Finance, 2008 OK 2, ¶30, 184 P.3d 467; Weddington v. Henry, 2008 OK 102, ¶1, 202 P.3d 143; In Re Initiative Petition No. 382, State Question No. 729, 2006 OK 45, ¶18, 142 P.3d 400; Morgan v. Daxon, 2001 OK 104, ¶1, 49 P.3d 687; Campbell v. White, 1993 OK 89, ¶20, 856 P.2d 255.

¶10 One of the main reasons the logrolling continues to be a problem is the consolidation of multiple unrelated bills together. This was the problem in Nova,

where five disparate bills related tangentially to freedom of conscience were consolidated together into one bill.[18] If these individual bills, each in themselves concerning only one subject, had been left unconsolidated, then they would likely not have triggered the anti-logrolling provisions of the Oklahoma Constitution.

¶11 For over a hundred years, this Court has considered the provisions of the Okla. Const., art. 5, §57. In 1908, in In Re County Comm'rs of Counties Comprising Seventh Judicial Dist., 1908 OK 207, ¶¶4-5, 98 OK 207, this Court enforced the requirement of the Oklahoma Constitution that bills shall embrace but one subject.[19]

¶12 The real problem with logrolling is that it creates a situation where there is only the illusion of choice, where various legislative proposals are amalgamated into a statutory chimera in order to force individual Legislators to vote for all measures if they wish one to see the light of day. It is easy to see why the issue might be confusing. Because the United States Constitution does not have a

[18] Nova Health Systems v. Edmondson, 2010 OK 21, ¶3, 233 P.3d 380.

[19] In In Re County Comm'rs Comprising Seventh Judicial Dist., 1908 OK 207, ¶¶4-5, 98 OK 207, we held that:

> [t]he abuses which called such provision into existence are clearly understood, and are twofold. Each subject brought into the deliberation of the legislative department of the government is to be considered and voted on singly, without having associated with it any other measure to give it strength. Experience had shown that measures having no common purpose, and each wanting sufficient support on its merits to secure its enactment, have been carried through legislative bodies and enacted into laws. When [sic] neither measure could command or merit the approval of a majority of that body.
>
> The other abuse against which this provision was levied was to prevent matters foreign to the main objects of a bill from finding their way into such enactment surreptitiously.

provision prohibiting logrolling, Congress is permitted to combine various disparate subjects together in one bill and frequently does so. The Oklahoma Legislature may not.

¶13 In Campbell v. White, 1993 OK 89, 856 P.2d 255, this Court found unconstitutional two bills which contained multiple subjects in violation of the Okla. Const., art. 5, §56.[20] We stressed the important nature of the Oklahoma Constitution's anti-logrolling provisions and emphasized the reasons for such provisions, which are designed to prevent the enactment of legislation through the combination of unpopular causes with popular legislation on an entirely different subject.[21] We further stated that not only does the single subject rule prohibit log-rolling, it also enables the public and the Legislature to understand the scope and effect of pending legislation.[22]

¶14 Since Campbell, we have repeatedly addressed violations of the single subject rule. In Morgan v. Daxon, 2001 OK 104, 49 P.3d 687, the Court found a

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[20] The Okla. Const., art. 5, §56 concerns general appropriations bills, but contains a single subject provision similar in nature to Okla. Const., art. 5, §57. The Okla. Const., art. 5, §56 provides:

§ 56. General appropriation bills - Salaries - Separate appropriation bills.

The general appropriation bill shall embrace nothing but appropriations for the expenses of the executive, legislative, and judicial departments of the State, and for interest on the public debt. The salary of no officer or employee of the State, or any subdivision thereof, shall be increased in such bill, nor shall any appropriation be made therein for any such officer or employee, unless his employment and the amount of his salary, shall have been already provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject.

[21] Campbell v. White, see note 17, supra at ¶7.

[22] Campbell v. White, see note 17, supra.

reconciliation bill unconstitutional for violating the anti-logrolling provisions of the Okla. Const., art. 5, §§56 and 57. Again, we addressed the application of the single subject rule in In Re: Initiative Petition No. 382, State Question No. 729, 2006 OK 45, 142 P.3d 400. In that case, we responded to a challenge that an initiative petition addressing the power of eminent domain as well as the enforcement of zoning laws violated the single subject requirement of the Okla. Const., art. 5, §57.[23]

¶15 Proponents of Initiative Petition No. 382 argued that previous decisions of this court implied adoption of an expansive test of germaneness that is broad, liberal, and satisfied by all proposed laws but those with the most scattered and disconnected provisions.[24] We explained that such a reading is not consistent with the requirements of Okla. Const., art 5, §57, and held that:

> ... seeming inconsistences in our single subject rule jurisprudence melt away when one understands that each case was decided by determining whether the purposes behind the rule were offended. Whether we explicitly stated it or not, the issue is not how similar or "related" any two provisions in a proposed law are, or whether one can articulate some rational connection between the provisions of a proposed law, but whether it appears that either the proposal is misleading or provisions in the proposal are so unrelated that many of those voting on the law would be faced with an unpalatable all-or-nothing choice.[25]

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[23] In Re: Initiative Petition No. 382, State Question No. 729, 2006 OK 45, ¶10-12, 142 P.3d 400.

[24] In Re: Initiative Petition No. 382, State Question No. 729, see note 23, supra at ¶13.

[25] In Re: Initiative Petition No. 382, State Question No. 729, see note 23, supra at ¶14 (citing In Re: Initiative Petition No. 314, 1980 OK 174, ¶¶59-60, 625 P.2d 595).

¶16 In Fent v. State ex rel. Office of State Finance, 2008 OK 2, 184 P.3d 467, the petitioner argued that an appropriations bill violated the single subject rule because it made multiple special appropriations to several different subjects or objects of state government. We rejected the notion that the subject of the legislation should be tested by broad, expansive themes such as allocating surplus or managing accounts, and once again affirmed the use of the germaneness test we put forward in Campbell.[26]

¶17 A year later, in Fent v. State ex rel. Oklahoma Capitol Improvement Authority, 2009 OK 15, 214 P.3d 799, we again addressed violations of the single subject rule, and discussed our previous cases on the subject. We rejected any kind of broad, expansive, and thematic based approach in favor of measuring the germaneness of various bill provisions to each other.[27] We reiterated that while bond measures do not necessarily have to be brought individually, at the very least they must have some semblance of relation to each other and must not be misleading or provide the voter or legislator with an all or nothing choice.[28]

V.
GUIDELINES

[26] Fent v. State ex rel. Office of State Finance, 2008 OK 2, ¶¶22-23, 184 P.3d 467.

[27] Fent v. State of Oklahoma, *ex rel.* Oklahoma Capitol Improvement Authority, 2009 OK 15, ¶¶20-21, 214 P.3d 799.

[28] Fent v. State of Oklahoma, *ex rel.* Oklahoma Capitol Improvement Authority, see note 27, supra at ¶24.

¶18 Perhaps guidelines with regard to the single subject provision of Okla. Const., art 5, §57 will prevent this Court from having to revisit the issue. This Court interprets the single subject rule using a "germaneness" test.[29] The single subject rule requires the following:

- The provisions of a bill must be related to a single subject. The provisions are related to a single subject if the provisions are germane, relative, and cognate to a readily apparent common theme and purpose.[30]
- A voter or a legislator must be able to make a choice about voting for a bill without being misled, and may not be forced to choose between two unrelated provisions contained in one measure in order to embrace the one they support.[31]

[29] Fent v. State of Oklahoma, *ex rel.* Oklahoma Capitol Improvement Authority, see note 27, supra at ¶16.

[30] *Compare* Fent v. State of Oklahoma, *ex rel.* Oklahoma Capitol Improvement Authority, see note 27, supra at ¶16 (Senate Bill 1374 violated the germaneness requirement of the single subject rule of art. 5, §57 of the Oklahoma Constitution because it addressed the separate subjects of bond issuance for: 1) the Native American Cultural and Educational Authority; 2) the State's Oklahoma Conservation Commission; and 3) a local River Parks Authority.) *with* Edmondson v. Pearce, 2004 OK 23, ¶45, 91 P.3d 605 (No violation of the single-subject requirement where Oklahoma's anti-cockfighting Act was unequivocally concerned with one subject and the Act was a unified, germane whole, having as its central purpose the prevention of cruelty to birds by outlawing cockfighting and related activities and providing, after a criminal conviction, for the forfeiture of birds or equipment used in any cockfighting endeavor.)

[31] In re Initiative Petition No. 382, see note 23, supra at ¶15 (We held that a ballot initiative proposing a new statute limiting the power of public bodies to take private property by eminent domain and in the same initiative also requiring just compensation to be paid to landowners negatively affected by a zoning law "presents a voter with exactly the sort of choice the single subject rule was enacted to prevent.")

- Legislation may not be made "veto proof" by combining two totally unrelated subjects in one bill.[32]
- A mere functional relationship between provisions is insufficient; rather, the subjects have to have at least a semblance of relation to each other and must not be misleading or provide the voter or legislator with an all or nothing choice.[33]

¶19 A culinary example may be more illustrative. If you make a peanut butter cookie, it is apparent that it is a smooth, one flavor cookie. It is still a peanut butter cookie even if you use crunchy peanut butter, because its major flavor is still peanuts. When you add chocolate chips, pecans, coconut, M&M's, raisins, and dried cranberries, the additional discrete ingredients change the homogenous nature of a peanut butter cookie into a jumble of different tastes and textures. It is still a cookie, it is just not a peanut butter cookie. Likewise, the CLRA is still a statute, but it ceased to be a statute for the reform of civil procedure when sections having nothing to do with civil procedure were included.

[32] Thomas v. Henry, see note 7, supra at ¶¶29-31 (Insertion of a single non-germane provision restricting those who completed a GED from obtaining in-state tuition rates for higher education, into a bill purporting to control illegal immigration, violated the single subject rule.)

[33] Fent v. State of Oklahoma, *ex rel.* Oklahoma Capitol Improvement Authority, see note 27, supra at ¶¶19-21. (We reiterated that this Court has rejected a broad, thematic approach to the single-subject requirement.)

¶20 The nature of the single subject rule necessarily requires that legislation be examined on a case by case basis.[34] The aforementioned guidelines illustrate how legislation can be drafted which satisfies the requirements of Okla. Const., art 5, §57.

CONCLUSION

¶21 It is not the role of this Court to determine the wisdom of legislation. It is my hope that in the future the Court will not be forced to invalidate reform legislation because it runs contra to the Oklahoma Constitution.

[34] Examination by this Court of a particular piece of legislation, at a particular time, is not always appropriate. In Fent v. Fallin et. al., 111,199 (Okla. 2013), we declined to assume original jurisdiction in a challenge to a bill authorizing a statewide charter school and designating a separate $30 million appropriation to public schools. The Supreme Court is not constrained to exercise its original jurisdiction in any case; whether it does so is always a matter of discretion. Application of Sewer Improvement Dist. No. 1, 1950 OK 64, ¶8, 216 P.2d 303. In exercising its discretion, the Court is mindful of the limited role of its original jurisdiction. Kitchens v. McGowen, 1972 OK 140, 503 P.2d 218. A decision on the part of this Court not to accept original jurisdiction should not be taken as a decision on the merits in favor of one party or the other. A request that this Court assume original jurisdiction is not the same as an appeal. The right of appeal in Oklahoma is a constitutional right guaranteed by the Constitution. This cannot be taken away by any act of the Legislature. Peterman v. Chapman, 1921 OK 202, ¶5, 200 P. 776.

2013 OK 37

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

CAROL A. DOUGLAS, Administratrix of the Estate of Richard Lee Douglas, deceased,	)	
Plaintiff/Petitioner,	)	
v.	)	No. 110,270
	)	FOR OFFICIAL PUBLICATION
COX RETIREMENT PROPERTIES, INC., an Oklahoma Corporation,	)	
Defendant/Respondent.	)	

WINCHESTER, J., with whom Taylor, J. joins, dissenting:

¶1 I respectfully dissent. This opinion demonstrates how difficult the single-subject rule is to explain with the precision necessary to instruct a legislative body concerning the rule's application. House Bill 1603 is commonly called the Comprehensive Lawsuit Reform Act of 2009. Its purpose is tort reform. The majority opinion recites the number of sections and some of the subjects addressed within H.B. 1603. The majority opinion states that the provisions are so unrelated that those voting on the law were faced with an all-or-nothing choice. It says this Court will not pick and choose which provisions of the bill are germane and cites *Thomas v. Henry*, 2011 OK 53, 260 P.3d 1251, as a comprehensive review of our case law regarding the single-subject rule. The majority opinion explains that in *Thomas* this Court severed the offending provisions of the Oklahoma Taxpayer and Citizens Protection Act of 2007, but

that bill had only 13 sections so the Court easily discerned the sections related to discouraging illegal immigration, the subject of that act.

¶2 Early after statehood, the Supreme Court in *Griffin v. Thomas*, 1922 OK 134, ¶ 17, 206 P. 604, 609, quoted with approval from 25 R.C.L.[1], § 88, p. 842:

> "The term 'subject' as used in these provisions is to be given a broad and extended meaning, so as to allow the Legislature full scope to include in one act all matters having a logical or natural connection. If all parts of an act relate directly or indirectly to the general subject of the act, it is not open to the objection of plurality. . . .This constitutional provision does not contain any limitation on the comprehensiveness of the subject, which may be as comprehensive as the Legislature chooses to make it, provided it constitutes, in the constitutional sense, a single subject and not several; it may include innumerable minor subjects, provided that all the minor subjects, when combined, form only one general subject or topic."

¶3 The majority opinion gives little guidance to the legislature regarding why the law found in H.B. 1603 is unconstitutional. What is the lesson from the majority's analysis of *Thomas v. Henry* and the 13 sections the Court examined within it? Is this Court willing to examine a "comprehensive" bill and consider severing sections if the bill has only 13 sections, but not if it has 90?

¶4 I believe it more likely that the legislature and the public understood the common themes and purposes embodied in the legislation; it was tort reform. The vote in the House of Representatives was 86 in favor of the bill and 13 opposed. The Senate voted 42 in favor of the bill and 5 against it. Governor Brad

[1] 25 William Mark McKinney &Burdett Alberto Rich, RULING CASE LAW 842 (1919).

Henry signed the bill. This bill appears to have had overwhelming support of two branches of government.

¶5 Although the majority recites case law that "a heavy burden is cast on those challenging a legislative enactment to show its unconstitutionality" and that "[e]very presumption is to be indulged in favor of the constitutionality of a statute," the majority's result does not appear to meet that burden or fulfill that presumption. Requiring affidavits in professional malpractice cases, 12 O.S.2011, § 19, appears to me to be both related and germane to tort reform.[2] Without deciding the wisdom, need, or desirability of H.B. 1603,[3] I have no trouble concluding that the affidavit requirement of § 19 has a close relationship to the title of the Act, which subject is comprehensive lawsuit reform.

¶6 In addition, this Act has a severability clause, as did the Oklahoma Taxpayer and Citizens Protection Act of 2007, which this Court reviewed for a violation of the single-subject rule in *Thomas*. Even if the H.B. 1603 did not have a severability clause, 75 O.S.2011, § 11a specifically provides for severance if any of the provisions of an act are found to be unconstitutional.[4]

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[2] "Oklahoma adheres to the germaneness test and the most relevant question under such analysis is whether a voter (or legislator) is able to make a choice without being misled and is not forced to choose between two unrelated provisions contained in one measure. *In re Initiative Petition No. 382*, 2006 OK 45, ¶9, 142 P.3d 400,405." *Thomas v. Henry*, 2011 OK 53, ¶ 26, 260 P.3d 1251, 1260.

[3] Where legislation is constitutionally valid, this Court is not authorized to delve into the wisdom, need, or desirability of a legislative enactment. *Oklahoma Industries Authority v. Barnes*, 1988 OK 98, ¶ 14, 769 P.2d 115, 119.

[4] Title 75 O.S.2011, § 11a(1) provides:

¶7 Are topics such as "civil procedure" or "tort reform" too broad to be encompassed within one bill? In 1978, the legislature passed the Civil Procedure—Criminal Procedure—Evidence Code.[5] It had a total of 78 sections. It is likely that some of the legislators who voted in favor of the bill compromised to secure its passage. It did involve one subject, evidence. The Uniform

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"In the construction of the statutes of this state, the following rules shall be observed:

"1. For any act enacted on or after July 1, 1989, unless there is a provision in the act that the act or any portion thereof or the application of the act shall not be severable, the provisions of every act or application of the act shall be severable. If any provision or application of the act is found to be unconstitutional and void, the remaining provisions or applications of the act shall remain valid, unless the court finds:

"a. the valid provisions or application of the act are so essentially and inseparably connected with, and so dependent upon, the void provisions that the court cannot presume the Legislature would have enacted the remaining valid provisions without the void one; or

"b. the remaining valid provisions or applications of the act, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

"2. For acts enacted prior to July 1, 1989, whether or not such acts were enacted with an express provision for severability, it is the intent of the Oklahoma Legislature that the act or any portion of the act or application of the act shall be severable unless:

"a. the construction of the provisions or application of the act would be inconsistent with the manifest intent of the Legislature;

"b. the court finds the valid provisions of the act are so essentially and inseparably connected with and so dependent upon the void provisions that the court cannot presume the Legislature would have enacted the remaining valid provisions without the void one; or

"c. the court finds the remaining valid provisions standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

[5] 1978 Okla.Sess.Laws, ch. 285, §§ 101 through 1103.

Commercial Code was passed by the legislature in 1961.[6] It had 10 articles and a total of 368 sections. Its articles included Sales, which contains 97 separate sections; Commercial Paper; Bank Deposits and Collections; Letters of Credit; Bulk Transfers; Warehouse Receipts and Special Provisions; Investment Securities; Secured Transactions, Sales of Accounts, Contract Rights and Chattel Paper; and a Repealer Section that removed amended statutes throughout titles 6, 9, 13, 15, 18, 23, 24, 42, 46, 48, 55, and 60. When considering all that it encompasses, the Uniform Commercial Code likely resulted in compromises by legislators to pass an important and significant piece of legislation.

¶8 Logrolling is the "legislative practice of including several propositions in one measure or proposed constitutional amendment so that the legislature or voters will pass all of them, even though these propositions might not have passed if they had been submitted separately."[7] If this is a description of the "single-subject" rule, the legislature would have substantial difficulty passing any comprehensive legislation including any uniform codes that are generally adopted among the states. One recent article commented that although the single-subject rule "is a noble attempt to reign in state legislatures and encourage the passage of more coherent and uniform laws supported in fact by majority

[6] 1961 Okla.Sess.Laws, pp. 69 through 182.
[7] Black's Law Dictionary (Westlaw 9th ed. 2009)

votes, the implementation of the states' various single subject rules has had mixed success, at best."[8] It further observed:

> "The Oklahoma Supreme Court defines a 'single subject' as one that has 'a readily apparent common theme and purpose.' Likewise, in Minnesota, the courts have found that a single subject means 'one general subject' and in Alaska, it means 'one general idea.' Similarly, in Alabama, 'one subject' means that the provisions are referable to and cognate of the bill's subject. No doubt, with definitions as amorphous as these, it is easy to see how determinations of whether a subject is indeed 'single' can be based on a number of subjective factors including possibly the popularity or necessity of the legislation." [Footnotes omitted.]

¶9 Legislation requires some compromise. At times, even the wording of a single statute on a single subject may result in an all-or-nothing choice for those voting on it. The single-subject dilemma leads me to conclude that this Court should adopt a more deferential approach toward the rule. Based on the majority's present opinion, statutes that were enacted in a comprehensive bill, and that have remained as law for years could be found unconstitutional. The legislature will have wasted its time in working on any comprehensive legislation. Such legislation may be declared unconstitutional immediately, or worse, after a few years codified in the official state statutes a whole comprehensive bill will be struck and cause the chaos that will inevitably follow this opinion. Court opinions containing an overly restrictive interpretation of the single-subject rule will likely have a chilling effect on the legislative process. The result will be an exponential

[8] Stanley Kaminski and Elinor Hart, *Log Rolling versus the Single Subject Rule*, 80 USLW 1156, 02/28/2012, http://www.duanemorris.com/articles/static/kaminski_hart_bloombergbna_022812.pdf

number of bills filed along with an expanded legislative process but with no greater assurance the legislation will pass the single-subject test. The severance clause is included to allow the courts to remove unconstitutional sections and still preserve the legislation.

¶10 I would find that H.B. 1603 does not violate the single subject rule.